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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,730	03/22/2002	Manfred Weuthen	C 2066 PCT/US	4486

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EXAMINER

MRUK, BRIAN P

ART UNIT PAPER NUMBER

1751

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,730

Applicant(s)

WEUTHER ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-26, 32, 33 and 35-44 is/are rejected.
- 7) ☒ Claim(s) 27-31 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other:

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on September 22, 1999. It is noted, however, that applicant has not filed a certified copy of the foreign priority application as required by 35 U.S.C. 119(b).

Claim Objections

2. Claims 34 and 35 are objected to because of the following informalities: In instant claims 34 and 35, the phrase "wherein at least one alk(en)yl" should be amended to recite "wherein the at least one alk(en)yl" for grammatical purposes. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claim 40 recites the limitation "wherein the mixture of linear alcohols" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. The examiner notes that instant claim 37, from which claim 40 depends on, does not recite the limitation "mixture of linear alcohols". The examiner suggests that instant claim 40 should be amended to depend on instant claim 39 to provide proper antecedent basis. Appropriate correction and/or clarification is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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7. Claims 21-26, 32-33, and 35-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Haerer et al, U.S. Patent No. 5,602,093.

Haerer et al, U.S. Patent No. 5,602,093, discloses a dishwashing rinse aid composition comprising an alkyl polyglycoside and an alkyl polyglycol ether (see abstract and col. 2, lines 24-67). Specifically, note Table 1, Example 11, which discloses a composition comprising 8% by weight of APG 225, 7% by weight of a C₁₂₋₁₈ alkyl polyglycol ether with 4 moles of ethylene oxide, 2.0% by weight of a fatty alcohol with 9 moles of ethylene oxide, and adjunct ingredients, per the requirements of instant claims 21-26, 32-33 and 35-44. Therefore, instant claims 21-26, 32-33, and 35-44 are anticipated by Haerer et al, U.S. Patent No. 5,602,093.

8. Claims 21, 23, 26, 35, 37, 39, and 41-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al, U.S. Patent No. 6,551,976.

Smith et al, U.S. Patent No. 6,551,976, discloses a laundry detergent composition comprising a linear fatty alcohol ethoxylate, an alkyl polyglycoside, and an alkyl ether sulfate (see col. 2, lines 18-67 and col. 6, lines 20-30). Specifically, note Table 1, Example 1, which discloses a detergent composition comprising 4% by weight of an alkyl ether sulfate, 2.86% by weight of a linear alcohol ethoxylate, 4% by weight of an alkyl polyglycoside, and adjunct ingredients, per the requirements of the instant claims. Therefore, instant claims 21, 23, 26, 35, 37, 39, and 41-44 are anticipated by Smith et al, U.S. Patent No. 6,551,976.

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9. Claims 21, 23, 26, 35, 37, 39, and 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Balzer et al, U.S. Patent No. 5,370,816.

Balzer et al, U.S. Patent No. 5,370,816, discloses a detergent composition comprising a fatty alcohol ethoxylate and an alkyl polyglycoside (see col. 2, lines 48-65 and col. 4, lines 13-29), per the requirements of the instant claims. Specifically, note the Examples in Tables 1 and 2. Therefore, instant claims 21, 23, 26, 35, 37, 39, and 41-44 are anticipated by Balzer et al, U.S. Patent No. 5,370,816.

Double Patenting

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 21, 23-26, 35, 37, and 39-44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-31 of copending Application No. 10/027,447. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/027,447 claims a similar detergent composition comprising an

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ethoxylated fatty alcohol and an alk(en)yl oligoglycoside (see claims 11-31 of copending Application No. 10/027,447), per the requirements of the instant claims. Therefore, instant claims 21, 23-26, 35, 37, and 39-44 of the instant invention are an obvious formulation in view of claims 11-31 of copending Application No. 10/027,447.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

12. Claims 27-31 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Specifically, the prior art of record does not teach or suggest in general a composition comprising the specific surfactant mixture required by applicant in instant claims 27-31 and 34.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Blm

Brian Mruk
August 30, 2003

Brian P. Mruk

Brian P. Mruk
Patent Examiner
Tech Center 1700